that he should be sent to an institution or a home. This letter could either be the result of the "contact" by the probation officer or the police. Paragraph 4 of this letter states:

"I have only recently been informed of his association with the secret society of which he has been an active member. I cannot control him and if he is allowed to carry on as he has done, it can be most dangerous to himself, to the family with whom I am living and to the community. I cannot at this stage try to control him because he would not listen to me."

The matter came up for hearing on the 23rd day of May 1970. This time Gilbert Ang was not present in court but the adoptive grandmother was. That day's proceedings do not show what her name is or whether the letter dated the 21st May 1970 was in fact written by her. The appellant was not even identified by her. In fact I do not know who this woman was. On this occasion the probation officer put in another report (Ex. P2). The first report (Ex. P1) could not bring the appellant within the mischief of either section 36 or section 37 of the Juvenile Courts Ordinance. No one had asked the probation officer for a second report. She had already interviewed the adoptive grandmother before submitting the first report. The second report (Ex. P2) is dated the 23rd May 1970, *i.e.* it was prepared on the same day as the "application" was to come up for hearing again. The report (Ex. P2) is an attempt to bring the "application" within section 37 of the Juvenile Courts Ordinance 1947. It may only be a conjecture to say that the adoptive grandmother was made to write that letter dated the 21st May 1970. While it is true that I should not act on mere conjectures yet it is also my duty to see that there is no interference with the liberty of an individual except through due process of law and in strict accordance therewith. In any event the adoptive grandmother, who is also described in the record as the applicant, was never affirmed. Her unaffirmed statement said no more than that she was old and unable to control the appellant. This statement was not evidence. The appellant does not at any stage seem to have been given any opportunity whatsoever either to cross-examine the probation officer or Gilbert Ang or the adoptive grandmother. There is no satisfactory evidence before me that the letter which was sent to the court was in fact sent by the person who appeared before the juvenile court. That letter was neither proved nor produced, nor was the appellant given any opportunity to have a sight of it or a copy thereof. The letter from the so-called adoptive grandmother was again no application to the juvenile court in the proper sense of the word.

Section 37 of the Juvenile Courts Ordinance requires the guardian to prove to the juvenile court that the guardian is unable to control the young person and the court has further to be satisfied that it is expedient to deal with the young person and that the guardian understands the results which would follow from the making of the order and consents to such order being made. There was neither any proof in this case that the guardian was unable to control the appellant nor do we have any evidence that the court was satisfied that it was expedient to deal with the appellant, nor was there any evidence to show that the guardian understood the results of the order which the court was about to make nor that she consented to the said order being made. It was in fact the police who wanted the order.

In this case I find that there has not been any due observance of law and procedure by the learned president. The appeal is allowed. The order of the juvenile court is set aside and the appellant is restored to his liberty. I do not know whether he is still subject to any order under the Emergency (Public Order and Prevention of Crime) Ordinance 1969. Insofar as his liberty has been restrained by any order made under the Juvenile Courts Ordinance he is, of course, at liberty to seek such relief as he may be entitled to under the law either against Gilbert Ang, the Minister or the Government.

Appeal allowed.

AJAIB SINGH v. JEFFREY FERNANDEZ

[O.C.J. (Yong J.) September 22, 1970]

[Kuala Lumpur — Originating Summons No. 92 of 1970]

Practice and Procedure — Application for stay of proceedings pending appeal — Practice on which application may be granted — Federal Court (Civil Appeals) (Transitional) Rules, 1963, r. 14 — Courts of Judicature Act, 1964, s. 73.

Advocates and Solicitors — Disciplinary Committee — Appointment — Application to stay proceedings before the committee — Long delay — Stay refused — Advocates and Solicitors Ordinance, 1947, s. 29.

In this case the respondent applied for an order to stay the proceedings before the disciplinary committee appointed by the learned Chief Justice of Malaya under the Advocates and Solicitors Ordinance, 1947 to enquire into a complaint of unprofessional conduct against the respondent. The evidence before the court disclosed that the learned Chief Justice's order, appointing the committee was made on April 9, 1970 and the respondent did not make his application to set it aside until June 1, 1970. His application was dismissed on June 10, 1970, but he did not appeal against the order of dismissal until July 19, 1970, nor did he make any proper application to stay proceedings earlier than August 17, 1970.

Held: the respondent's application for stay of proceedings had not been promptly made and he had not satisfied the court that serious or irreparable injury would result to him if the stay was not granted, and therefore, the application must be dismissed.

Cases referred to:-

(1) *Serangoon Garden Estate Ltd.* v. *Ang Keng,* [1953] M.L.J. 116.

(2) *Wilson* v. *Church (No. 2),* (1879) 12 Ch. D. 454, C.A.

(3) *Monk* v. *Bartram,* [1891] 1 Q.B. 346, C.A.

(4) *Tuck* v. *Southern Counties Deposit Bank,* (1889) 42 Ch. D. 471, C.A.

(5) *Griffiths* v. *Benn,* (1911) 27 T.L.R. 346, C.A.

(6) *Shaw* v. *Holland,* [1900] 2 Ch. 305, C.A.

(7) *Coleman & Co. Ltd.* v. *Stephen Smith & Co. Ltd.,* [1911] 2 Ch. 572, C.A.

(8) *Nawab S.N. Ally Khan* v. *Rajah O. Khan,* (1865) L.R. 1 P.C. 8 at pp. 11 & 12.

ORIGINATING SUMMONS.

Mrs. Ng Mann Sau (Federal Counsel) for the applicant.

R. R. Sethu for the respondent.

Yong J.: This motion by the respondent Jeffrey Fernandez asks for an order "to stay the proceedings before the Disciplinary Committee" appointed by the learned Chief Justice of Malaya under the Advocates and Solicitors Ordinance, 1947 to enquire into the complaint of unprofessional conduct against the respondent in certain criminal proceedings in which he appeared as defence counsel.

This motion made under rule 14 of the Federal Court (Civil Appeals) (Transitional) Rules 1963 which is repeated in section 73 of the Courts of Judicature Act 1964 reads: —

"An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the court below or the Federal Court so orders and no intermediate act or proceeding shall be invalidated except so far as the Federal Court may direct."

Rule 14 corresponds with Order LV, rule 14 of the Rules of the Supreme Court, 1934 of Singapore* and with English Order 58 rule 12(1) of the Rules of the Supreme Court 1883 and Order 59 rule 13(1) of the Rules of the Supreme Court 1965.

My attention has been drawn to *Serangoon Garden Estate Ltd.* v. *Ang Keng*,[1] *Wilson* v. *Church*,[2] *Monk* v. *Bartram*,[3] *Tuck* v. *Southern Counties Deposit Bank*[4] and *Griffiths* v. *Benn*,[5] all of which were cases which dealt with applications for stay of execution.

In the instant case the motion asks for a stay of proceedings. In *Shaw* v. *Holland*,[6] the appellants defending an action for damages for wrongful allotment of shares in a company asked for a stay of inquiries directed by the judgment pending an appeal to the House of Lords. His application was refused by Lord Alverstone M.R., who said at p. 313:

"The general rule" he said, "should be that the proceedings under a judgment should not be stayed pending an appeal, unless on special grounds. Of course there are many cases in which the expense involved in inquiries might be so great and the uncertainty as to the necessity of prosecuting them so great, that it would be desirable to stay the prosecution of the inquiries pending an appeal. But I think that in every case some special ground should be shewn upon any application to the court for a stay."

Rigby L.J. was also of the same opinion. He said at p. 314:

"that a stay of inquiries is very rarely needed, and should be granted only under very special circumstances pending an appeal. I do not find any such special circumstances here."

Then again in a trade mark passing-off action, the dedefendants' application to stay proceedings to account profits pending appeal was refused by Swinfen Eady J. in *Coleman & Co. Ltd.* v. *Stephen Smith & Co. Ltd.*[7] who held that: —

"It is not the practice of the court to stay such an account unless irreparable injury would otherwise be caused. The plaintiffs will proceed with the account at their own risk as to costs. It would unduly protract litigation if an account could not be proceeded with until after the decision of the ultimate appeal in the case."

The defendants then proceeded to appeal against the judgment in the passing-off action but took no steps to appeal against the order of the trial judge refusing a stay of proceedings to account.

In the Privy Council case of *Nawab S. N. Ally Khan* v. *Rajah O. Khan*,[8] in which the appellant appealing from the order of the High Court which remitted the cause back to the Zillah Court for the trial of certain issues, applied, *inter alia*, to stay proceedings in the Zillah Court pending appeal, Lord Chelmsford said: —

"Any application for a stay of proceedings must be founded upon two points, which are essential to sustain the application; first, that a serious injury will be the result of the party applying unless the stay of proceedings is granted, and secondly, that the party has come promptly to make the application for delay."

After consulting these and other authorities up to the present day I am of the opinion that an application for stay of proceedings should be made promptly, and it must be proved to the satisfaction of the court that special circumstances exist such as if the stay was not granted serious or irreparable injury would result to the party applying.

According to the evidence before me in the instant case, the learned Chief Justice's order appointing the disciplinary committee was made on April 9, 1970 and the respondent did not make his application to set it aside until June 1, 1970. His application was dismissed on June 10, 1970. He did not appeal against the order of dismissal until July 19, nor did he make any proper application to stay proceedings earlier than August 17, 1970, although the order appointing the disciplinary committee was made on April 9, 1970. This in my opinion is a long delay.

The applicant Ajaib Singh in his affidavit of August 20, 1970 alleged that the respondent's motion for stay of proceedings was not *bona fide* and made solely for the purpose of delay. Judging from the three letters written by the chairman of the disciplinary committee to the respondent on June 30, July 13 and July 21, 1970 it seems to me that Ajaib Singh's allegations are well founded.

On the evidence before me I hold that the respondent's application for stay of proceedings has not been promptly made and that he has not satisfied me that serious or irreparable injury would result to him if the stay was not granted.

Perhaps the respondent's attention was not drawn to section 29 of the Advocates and Solicitors Ordinance 1947 which clearly indicates that the duty of the disciplinary committee was only to hear and investigate the complaint and to ascertain whether "the facts of the case constitute due cause for disciplinary action." If due cause was not proved, no further action would be taken on the complaint by the disciplinary committee. If proved, a further application by originating summons would have to be made to the

* See now Singapore Rules of the Supreme Court, 1970, O. 57 r. 15.

court for an order calling upon the advocate and solicitor concerned to show cause.

One would have thought that a member of this honourable profession would welcome an opportunity being given to the disciplinary committee to clear his name before being dragged into court. Even if the disciplinary committee's report be against him, he does not automatically suffer serious injury. On the contrary he would receive the report in which he would get the benefit of knowing the precise evidence alleged against him and be prepared for his defence.

In the circumstances of this case, the respondent's motion is dismissed with costs.

Motion dismissed.

Solicitors: *Chin & Fernandez.*

TAN HIN JIN & ANOR. v. PRABHULAL G. DOSHI

[O.C.J. (Abdul Hamid J.) September 24, 1970]

[Kuala Lumpur — Originating Motion No. 28 of 1970]

Administrative Law — Certiorari — Mandamus — Error on the face of record — Decision of Appeal Board for Federal Capital — Control of Rent Act, 1966, s. 6.

Interpretation — Statute — Control of Rent Act, 1966 — Alleged misconstruction of s. 6(c) by appeal board.

The applicants applied for an order for *certiorari* to remove and quash a decision by the Appeal Board for the Federal Capital of Kuala Lumpur whereby the fair rent of certain premises was determined at $600 per month; and for an order of *mandamus* that the said board do rehear and redetermine the matter. It was alleged that the board had acted contrary to law in taking into consideration the fact that the tenant had carried out substantial repairs and maintained the premises in good condition in coming to their decision and that there was an error on the face of the record in this case.

Held, dismissing the application: on the face of the record, there was nothing to show that the appeal board had acted erroneously and outside its jurisdiction and therefore the application must be dismissed.

Cases referred to:-

(1) *R.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1951] 1 All E.R. 268 at p. 269.

(2) *R.* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1952] 1 All E.R. 122.

(3) *R.* v. *Furnished Houses Rent Tribunal for Paddington and St. Marylebone Ex parte Kendal Hotels Ltd.* [1947] 1 All E.R. 448.

(4) *R.* v. *Agricultural Land Tribunal for the South Eastern Area, Ex parte Bracey* [1960] 2 All E.R. 518.

ORIGINATING MOTION.

Kok Wee Kiat for the applicants.

S. Y. Chan for the respondent.

Cur. Adv. Vult.

Abdul Hamid J.: This is a motion asking the court to make —

(a) An order of *certiorari* to remove into the High Court and to quash a decision made by the Appeal Board for the Federal Capital of Kuala Lumpur dated 8th December, 1969 whereby the fair rent of premises No. 49, Jalan Tuanku Abdul Rahman, Kuala Lumpur, was determined at $600 per month; and

(b) An order of *mandamus* that the said Appeal Board for the Federal Capital of Kuala Lumpur to rehear and re-determine Rent Appeal No. 7 of 1968.

The applicants are relying on the affidavit of Tan Hin Sin affirmed on 5th June, 1970 where it is alleged that on 8th December, 1969, the Appeal Board for the Federal Capital of Kuala Lumpur reversed the order of the Rent Tribunal for the Federal Capital of Kuala Lumpur and decided that the fair rent of the premises in question should be a sum of $600 per month and that the decision of the appeal board was contrary to section 6(e) of the Control of Rent Act, 1966 and the evidence adduced, when it took into consideration the repairs carried out by the tenant. It is further alleged that the appeal board contrary to law and section 6(c) of the Control of Rent Act, 1966 took into consideration in the tenant's favour that the tenant had maintained the said controlled premises in good condition.

The respondent, Mr. Prabhulal G. Doshi, in his affidavit affirmed on 20th July, 1970 contended that —

(a) It is not on record that the appeal board had based its decision on or acted contrary to section 6(e) of the Control of Rent Act, 1966; and

(b) The evidence adduced in an inferior tribunal is not a matter to be considered by the honourable court in an application for an order of *certiorari* to quash or *mandamus*.

Referring to paragraph 9 of the applicants' affidavit, the respondent contends that section 6(c) is a legal ground to be considered in arriving at the fair rent of controlled premises and that the appeal board has acted according to law and within its jurisdiction in arriving at the decision.

The respondent further contended that —

(a) Both orders of *certiorari* and *mandamus* to quash are discretionary and that this honourable court will not grant such orders unless the appeal board has acted without or in excess of jurisdiction; and

(b) On the face of the record the appeal board has not acted without or in excess of its jurisdiction.

Mr. Kok Wee Kiat, counsel for the applicants, submitted that the decision of the appeal board (T.H.S. '2') forms part of the record and as there was an error on the face of the record *certiorari* will issue to remove the order into the High Court to be quashed. He cited *Rex* v. *Northumberland Compensation Appeal Tribunal, Ex-parte Shaw*[1] where it was held —

"as the tribunal had stated on the face of the order the grounds on which they had made it and as it appeared that in law those grounds were not such as to warrant the decision to which they had come, *certiorari* would issue to remove the order into the High Court to be quashed."

The decision, he said, was affirmed in *Rex* v. *Northumberland Compensation Appeal Tribunal, Ex-parte Shaw*.[2]